

Committee on Resources, Full Committee

- - Rep. James V. Hansen, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6201 - - (202) 225-2761

Witness Statement

STATEMENT

of

DELL RAYBOULD

Representing

THE COMMITTEE OF NINE, WATER DISTRICT #1, STATE OF IDAHO

IDAHO WATER USERS ASSOCIATION, INC.

and

THE IDAHO FARM BUREAU FEDERATION

Before the

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

Regarding

WATER MANAGEMENT AND ENDANGERED SPECIES ACT ISSUES

IN THE KLAMATH BASIN

Klamath County Fairgrounds

3531 S. 6th St.

Klamath Falls, Oregon

June 16, 2001

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS DELL RAYBOULD, FROM REXBURG, IDAHO. I AM HERE TODAY REPRESENTING A NUMBER OF WATER, FARMING AND AGRICULTURAL INTERESTS IN THE STATE OF IDAHO, INCLUDING THE COMMITTEE OF NINE, WHICH IS THE GOVERNING BOARD OF WATER DISTRICT #1 IN THE STATE OF IDAHO, THE IDAHO WATER USERS ASSOCIATION, AND THE IDAHO FARM BUREAU FEDERATION.

I APPRECIATE THE OPPORTUNITY TO TESTIFY BEFORE YOU REGARDING THE SITUATION HERE IN THE KLAMATH BASIN AND ACROSS THE WEST. IN PARTICULAR, I WOULD LIKE TO ACKNOWLEDGE MY CONGRESSMAN, MIKE SIMPSON, AS WELL AS REPRESENTATIVE BUTCH OTTER, FOR THEIR ROLE IN PROVIDING ME WITH THE OPPORTUNITY TO TESTIFY.

I HAVE BEEN A FARMER AND A BUSINESSMAN IN EASTERN IDAHO FOR 53 YEARS. I HAVE SERVED IN WATER MANAGEMENT AS THE DIRECTOR OF CANAL COMPANIES, A PRIVATE RESERVOIR COMPANY, AND AN IRRIGATION DISTRICT. I AM ALSO A CURRENT MEMBER OF THE IDAHO STATE HOUSE OF REPRESENTATIVES, IN WHICH I SERVE ON THE RESOURCES AND CONSERVATION COMMITTEE.

THIS HEARING IS IMPORTANT NOT JUST FOR THE PEOPLE OF THE KLAMATH BASIN, BUT ALSO FOR THOSE PEOPLE LIVING IN IDAHO AND THROUGHOUT THE WEST THAT ARE DEPENDENT UPON IRRIGATED

AGRICULTURE.

THERE IS A BASIC LACK OF UNDERSTANDING AND RESPECT REGARDING THE ROLE THAT IRRIGATION HAS PLAYED IN THE SETTLEMENT OF THE WEST AND THE COMMITMENTS THAT THE FEDERAL GOVERNMENT MADE TO ENCOURAGE SETTLERS TO BRING THE DESERTS OF THE ARID WEST INTO PRODUCTION.

AGRICULTURE AND RANCHING IS STILL THE MOST IMPORTANT INDUSTRY IN THE WEST AND THE FEDERAL GOVERNMENT HAS A CONTRACTUAL, AS WELL AS A MORAL, OBLIGATION TO PROTECT THIS ESSENTIAL INDUSTRY WHICH THE FEDERAL GOVERNMENT ITSELF FOSTERED AND ENCOURAGED THROUGH DIRECT CONGRESSIONAL ACTION.

MR. CHAIRMAN, THERE ARE THREE GENERAL POINTS THAT I WOULD LIKE TO MAKE TODAY:

(1) THE FEDERAL GOVERNMENT SHOULD NEVER ALLOW THE CONSTITUTIONAL PROTECTIONS OF THIS NATION TO BE IGNORED OR MADE SUBSERVIENT TO ACTIONS OF CONGRESS. THE ISSUE HERE IS FUNDAMENTALLY A PROPERTY RIGHTS ISSUE AND THE CONSTITUTIONAL GUARANTEE THAT THE GOVERNMENT WILL NEVER TAKE PRIVATE PROPERTY WITHOUT JUST COMPENSATION, AND EVEN THEN, ONLY WHEN THERE ARE NOT ALTERNATIVES.

(2) THE FEDERAL GOVERNMENT NEEDS TO ADOPT AND MAINTAIN A CONSISTENT POLICY WESTWIDE REGARDING THE ACQUISITION AND USE OF WATER FOR ENDANGERED SPECIES ACT PURPOSES. SUCH ACQUISITIONS SHOULD BE FROM WILLING SELLERS ONLY AND THE WATER SHOULD BE USED CONSISTENT WITH STATE LAW. WATER SHOULD NOT BE TAKEN FROM IRRIGATORS AGAINST THEIR WILL OR USED IN A WAY THAT IS CONTRARY TO STATE LAW.

(3) SOUND SCIENCE MUST GUIDE ANY DECISION TO USE WATER FOR ENDANGERED SPECIES ACT PURPOSES. THE NEED FOR MINIMUM RESERVOIR POOLS OR DOWNSTREAM FLOW TARGETS MUST BE DEMONSTRATED BY CREDIBLE, PEER REVIEWED SCIENTIFIC EVIDENCE, NOT MODELS OR UNTESTED THEORIES. KNOWN FACTORS OF MORTALITY SUCH AS HARVEST, PREDATORS, AND OCEAN CONDITIONS MUST RECEIVE RENEWED FOCUS.

WE ARE HERE TODAY BECAUSE MORE THAN 1,500 FARMERS AND RANCHERS IN THE KLAMATH BASIN HAVE HAD THEIR WATER TAKEN FROM THEM WHEN THEY NEED IT MOST – DURING A DROUGHT – IN THE NAME OF THE ENDANGERED SPECIES ACT. AT LEAST NINETY PERCENT OF THE 200,000 ACRES OF FARMLAND UNDER THE KLAMATH PROJECT WILL BE WITHOUT WATER THIS YEAR. NOT BECAUSE OF A DROUGHT, BUT BECAUSE OF THE FEDERAL GOVERNMENT'S IMPLEMENTATION OF THE ENDANGERED SPECIES ACT. IT IS A WRONG-HEADED POLICY THAT HAS RESULTED IN THIS

CATASTROPHE AND ONE THAT NEEDS TO BE CHANGED.

THE ISSUE OF WHETHER, AND HOW, WATER SHOULD BE ACQUIRED FOR ENDANGERED SPECIES ACT PURPOSES IS NOT A NEW ONE. WE ARE VERY FAMILIAR WITH IT IN THE UPPER SNAKE RIVER BASIN IN IDAHO. IN RESPONSE TO THE LISTING OF SNAKE RIVER SALMON UNDER THE ESA IN 1991 AND 1992, THE NATIONAL MARINE FISHERIES SERVICE (NMFS) REQUESTED THAT THE U.S. BUREAU OF RECLAMATION PROVIDE UP TO 427,000 ACRE FEET OF WATER FROM THE UPPER SNAKE RIVER BASIN FOR THE PURPOSE OF ASSISTING IN THE DOWNSTREAM MIGRATION OF THE SALMON.

NMFS HAS REQUIRED THE DELIVERY OF WATER FROM IDAHO FOR FLOW AUGMENTATION IN BIOLOGICAL OPINIONS ISSUED DURING 1995, 1998, 1999 AND, MOST RECENTLY, ON MAY 2, 2001. DURING 1993, THE PACIFIC NORTHWEST REGIONAL DIRECTOR OF THE BUREAU OF RECLAMATION, JOHN KEYS, WAS PROVIDED WITH WRITTEN GUIDANCE FROM DAN BEARD, THE COMMISSIONER OF THE U.S. BUREAU OF RECLAMATION, REGARDING THE ACQUISITION OF WATER BY THE BUREAU TO AID IN THE RECOVERY OF THREATENED AND ENDANGERED SALMON.

THE JULY 19, 1993 MEMORANDUM FROM DAN BEARD IS ATTACHED TO MY WRITTEN TESTIMONY. IN HIS MEMORANDUM, COMMISSIONER DAN BEARD CONCLUDED THAT THERE WERE FOUR OPTIONS "AVAILABLE AND LEGALLY AUTHORIZED" TO SECURE WATER FOR FLOW AUGMENTATION. THEY WERE:

- (1) RELEASING WATER STORED BUT NOT UNDER CONTRACT;
- (2) RELEASING WATER COVERED BY EXISTING SPACEHOLDER CONTRACTS;
- (3) PARTICIPATING IN RENTAL WATER BANKS TO ACQUIRE WATER; AND
- (4) BUYING BACK ALREADY COMMITTED SPACE IN THE RESERVOIRS.

IT WAS OPTION NUMBER 2 ON THIS LIST -- "RELEASING WATER COVERED BY EXISTING SPACEHOLDER CONTRACTS" -- THAT RAISED THE FUNDAMENTAL ISSUE OF WHETHER THE FEDERAL GOVERNMENT WOULD RESPECT OR IGNORE THE UNITED STATES CONSTITUTION. MORE SPECIFICALLY, THE QUESTION WAS WHETHER WATER WOULD BE ACQUIRED ON A WILLING SELLER-WILLING BUYER BASIS, OR WHETHER WATER WOULD BE TAKEN BY THE FEDERAL GOVERNMENT WITHOUT REGARD TO PRIVATE PROPERTY RIGHTS AND THE CONTRACTUAL OBLIGATIONS OF THE BUREAU.

THROUGH HIS MEMO, COMMISSIONER BEARD SIGNED THE INTENT OF THE CLINTON ADMINISTRATION TO TAKE WATER AWAY FROM IRRIGATORS.

COMMISSIONER BEARD'S MEMO WAS MET WITH HEAVY CRITICISM BY THE ENTIRE WESTERN WATER COMMUNITY, AND ESPECIALLY BY IDAHO INTERESTS. AS JUST ONE EXAMPLE, BEARD WAS PEPPERED WITH QUESTIONS AT THE NATIONAL WATER RESOURCE ASSOCIATION'S ANNUAL CONFERENCE IN SAN DIEGO DURING THE FALL OF 1993.

DURING 1994, ON THE EVE OF NMFS ADOPTING A NEW BIOLOGICAL OPINION THAT WOULD GOVERN THE FLOW AUGMENTATION PROGRAM, IDAHO'S CONGRESSIONAL DELEGATION, LED BY SENATOR LARRY CRAIG, SECURED A WRITTEN PLEDGE, SIGNED BY COMMISSIONER DAN BEARD AND ROLLAND SCHMITTEN, ASSISTANT ADMINISTRATOR

FOR FISHERIES, NMFS, DEPARTMENT OF COMMERCE, THAT WATER FOR ESA PURPOSES WOULD ONLY BE ACQUIRED FROM WILLING SELLERS IN THE UPPER SNAKE RIVER BASIN AND THAT THERE WOULD BE NO TAKING OF WATER.

A COPY OF THIS APRIL 1, 1994 LETTER ADDRESSED TO SENATOR CRAIG AND A RELATED PRESS RELEASE FROM SENATOR CRAIG'S OFFICE, DATED APRIL 4, 1994, ARE ATTACHED TO MY TESTIMONY. THE BUREAU'S REGIONAL DIRECTOR, JOHN KEYS, WAS ALSO INSTRUMENTAL IN FORGING THE WILLING SELLER POLICY OF THE FEDERAL GOVERNMENT.

THE WILLING SELLER POLICY ANNOUNCED IN 1994, COUPLED WITH DEFERENCE TO STATE LAW, WAS SUBSEQUENTLY REFLECTED IN THE BIOLOGICAL ASSESSMENTS AND BIOLOGICAL OPINIONS ISSUED BY THE BUREAU AND NMFS. THIS REMAINS THE CASE TODAY.

WITH THE "WILLING SELLER" AND "STATE LAW" POLICY SO FIRMLY ENTRENCHED IN THE UPPER SNAKE RIVER BASIN, THE QUESTION MUST BE ASKED: WHAT HAPPENED IN THE KLAMATH BASIN? WHY WAS WATER HELD UNDER CONTRACT TAKEN FROM IRRIGATORS? IS THERE NO CONSISTENT POLICY EVEN WITHIN THE SNAKE/COLUMBIA BASIN REGARDING THE ACQUISITION OF WATER FOR ESA PURPOSES?

APPARENTLY NOT. THIS NEEDS TO CHANGE.

WE BELIEVE THAT THE RIGHT TO OWN PRIVATE PROPERTY IS ONE OF THE FUNDAMENTAL AND DEFINING CHARACTERISTICS OF THIS REPUBLIC. IT WOULD INDEED BE TROUBLING IF THE EROSION OF PRIVATE PROPERTY RIGHTS IS NOT AS TROUBLING TO THIS COMMITTEE AS IT IS TO US.

IN THE SHORT TERM, THE WATER USERS OF THE KLAMATH BASIN MUST BE COMPENSATED FOR THEIR LOSSES. THEIR LIVELIHOODS HAVE BEEN TAKEN BY THE FEDERAL GOVERNMENT AND MUST BE RETURNED TO THEM, IN TACT. THE ENDANGERED SPECIES ACT IS AN OBLIGATION OF ALL OF THE PEOPLE OF THE UNITED STATES – NOT JUST THOSE THAT RESIDE IN THIS BASIN. IT IS A MATTER OF BASIC FAIRNESS THAT JUST COMPENSATION BE PROVIDED FROM THE U.S. TREASURY FOR THE LOSSES THAT HAVE BEEN SUSTAINED.

THE RECENT COURT OF FEDERAL CLAIMS DECISION IN *TULARE LAKE BASIN WATER STORAGE DISTRICT v. UNITED STATES* (APRIL 30, 2001) REQUIRES NMFS AND THE U.S. FISH & WILDLIFE SERVICE TO COMPENSATE WATER USERS FOR REDUCED WATER DELIVERIES THAT RESULTED FROM ESA COMPLIANCE IN THE CENTRAL VALLEY OF CALIFORNIA. SO, TOO, SHOULD THE WATER USERS OF THE KLAMATH BASIN BE COMPENSATED FOR WATER SHORTAGES CAUSED BY THE FEDERAL GOVERNMENT.

IT HAS BEEN REPORTED THAT THE ECONOMIC LOSSES IN THE AREA THIS YEAR ARE LIKELY TO EXCEED \$200 MILLION. I APPLAUD THE BUSH ADMINISTRATION FOR INCLUDING \$20 MILLION IN DISASTER ASSISTANCE FOR THE KLAMATH BASIN IN ITS SUPPLEMENTAL APPROPRIATIONS REQUEST TO CONGRESS, AS URGED BY SENATOR GORDON SMITH AND REPRESENTATIVE GREG WALDEN. I UNDERSTAND THAT

OTHER FINANCIAL ASSISTANCE IS ALSO BEING ARRANGED. WHILE THIS WILL CERTAINLY AID THOSE IN NEED, THIS MONEY SHOULD BE RECOGNIZED FOR WHAT IT IS: A BAND-AID TO TEMPORARILY ALLEVIATE THE PAIN OF A MUCH LARGER WOUND.

TO FIX THE PROBLEM FOR THE LONG TERM, THE BUSH ADMINISTRATION MUST TAKE THE EXISTING WILLING SELLER/STATE LAW POLICY IN THE UPPER SNAKE RIVER BASIN AND APPLY IT WESTWIDE. RECLAMATION PROJECT BENEFITS, ESTABLISHED ALMOST A CENTURY AGO, SHOULD NOT BE BRUSHED ASIDE IN THE NAME OF THE ENDANGERED SPECIES ACT. THESE PROJECTS HAVE BEEN PAID FOR BY WATER USERS AND WHOLE COMMUNITIES HAVE GROWN UP AROUND THE PROJECTS AS A RESULT OF THE PROMISES MADE BY THE FEDERAL GOVERNMENT.

THE UNITED STATES SHOULD NOT TAKE THIS WATER FROM THE FARMERS AND RANCHERS OF THE KLAMATH BASIN. IF THE UNITED STATES DESIRES WATER FOR ESA PURPOSES, IT SHOULD BE REQUIRED TO PURCHASE THE WATER FROM WILLING SELLERS IN THE BASIN. THE USE OF THE WATER MUST ALSO BE CONSISTENT WITH STATE LAW.

IT IS MY EXPERIENCE THAT THIS FEDERAL POLICY HAS WORKED WELL IN THE UPPER SNAKE RIVER BASIN. I BELIEVE IT COULD WORK IN THE KLAMATH BASIN AND OTHER PARTS OF THE ARID WEST. MR. CHAIRMAN AND COMMITTEE MEMBERS, I THEREFORE REQUEST THAT YOU HELP SEE THAT IT IS ADOPTED.

OF COURSE, BEFORE ANY WATER IS PURCHASED, THERE MUST FIRST BE A DEMONSTRATED, SCIENTIFICALLY-BASED NEED FOR THE WATER. WATER USERS IN IDAHO HAVE RELENTLESSLY CHALLENGED THE SCIENTIFIC BASIS FOR NMFS' FLOW AUGMENTATION PROGRAM. A KEY PART OF THIS PROGRAM IS THE ESTABLISHMENT OF DOWNSTREAM FLOW TARGETS. WE CHALLENGE THE FLOW TARGETS AS BEING INCONSISTENT WITH ACTUAL HYDROLOGIC DATA MAINTAINED FOR THE PAST 80 YEARS.

SIMILAR QUESTIONS MUST BE ASKED IN THE KLAMATH BASIN REGARDING THE DOWNSTREAM FLOW TARGETS FOR THE COHO SALMON, AS WELL AS THE MINIMUM POOL LEVELS ESTABLISHED FOR THE SUCKERS. ARE THESE THRESHOLDS BASED ON OBSERVED DATA, OR ARE THEY BASED ON COMPUTER MODELS AND UNPROVEN THEORIES?

HAVE THE STUDIES RELIED UPON BY THE FEDERAL AGENCIES BEEN ADEQUATELY PEER REVIEWED BY CREDIBLE SCIENTISTS? HAVE BIOLOGICAL STUDIES DONE BY INDEPENDENT SCIENTISTS BEEN DISREGARDED BY THE FEDERAL AGENCIES?

THE ANSWERS TO THESE AND OTHER TOUGH SCIENTIFIC QUESTIONS -- AND NOT POLITICS -- SHOULD DICTATE WHETHER, AND HOW MUCH, WATER IS REQUIRED TO MEET THE NEEDS OF THE SPECIES. CREDIBLE, PEER REVIEWED DATA, AND THE CONSIDERATION OF ALL AVAILABLE SCIENTIFIC INFORMATION IS A MUST. DECISIONS TO TAKE WATER FROM IRRIGATORS SHOULD NOT BE GUIDED BY JUNK SCIENCE.

IN THE UPPER SNAKE RIVER BASIN, WATER USERS AND THE STATE OF IDAHO HAVE BEEN ABLE TO DEBUNK THE MYTH THAT FLOW AUGMENTATION WILL RECOVER THE SALMON. OTHER FACTORS ARE AT PLAY WHICH THREATEN THE FISH. I UNDERSTAND THAT OCEAN CONDITIONS ARE IMPROVING AND, IF SO, THIS SHOULD SIGNIFICANTLY INCREASE

SALMON RUNS. PREDATORS AND HARVEST ARE ALSO MAJOR SOURCES OF MORTALITY – ONES THAT CAN AND SHOULD BE CONTROLLED. THESE FACTORS MUST BE TAKEN INTO ACCOUNT WHEN LOOKING AT THE KLAMATH BASIN.

IN CONCLUSION, I FIND THE ENTIRE EPISODE IN THE KLAMATH BASIN THIS YEAR TO BE APPALLING. AND I AM NOT ALONE IN MY ASSESSMENT. IRRIGATORS IN IDAHO AND THROUGHOUT THE WEST ARE KEENLY AWARE OF THE PLIGHT HERE IN THE KLAMATH BASIN. TIME-HONORED CONTRACTS BETWEEN WATER USERS AND THE UNITED STATES HAVE BEEN THROWN ASIDE IN THE NAME OF THE ESA AND JUNK SCIENCE. FOR THIS, THE LOCAL ECONOMY AND A WAY OF LIFE HAVE BEEN SACRIFICED. WE ENCOURAGE YOU TO DO WHAT YOU CAN TO SEE THAT ORDER AND SANITY ARE RESTORED IN THE KLAMATH BASIN. IF THERE IS ANYTHING WE CAN DO TO HELP, WE WILL.

MR. CHAIRMAN, AGAIN I APPRECIATE THE OPPORTUNITY TO TESTIFY AND I WOULD WELCOME ANY QUESTIONS THAT YOU MAY HAVE.

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